

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARCO ANTONIO PEREZ PEREZ ET.AL. on their
own behalf and on behalf of others similarly
situated,

Plaintiffs,

vs.

ESCOBAR CONSTRUCTION INC. ET. AL.,

Defendants.

MEMORANDUM ENDORSED

Case No.: 20-CV-8010- LTS - GWG

**NOTICE OF MOTION TO DECERTIFY
PLAINTIFFS' COLLECTIVE ACTION**

PLEASE TAKE NOTICE that, upon the annexed Declaration of Yuting Li, Esq., Defendants' memorandum of law, and upon all prior papers and proceedings herein, Defendants will move this Court, before the **Honorable Gabriel W. Gorenstein**, United States District Court, 500 Pearl Street, New York, NY 10007, pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et. seq. and related case law, for an Order to: (1) decertify Plaintiffs' collective action under FLSA and dismiss all opt-in Plaintiffs from this action because they are not similarly situated to the named Plaintiffs; (2) to dismiss potential opt-in Plaintiffs Martin Galvan Junior and Diego Villasenor from this action because their consent to sue forms are inadmissible; and (3) dismiss opt-in Plaintiffs Martin Galvan Junior, Kesheem Hill, Diego Villasenor, and Oscar Garza (deceased) from this action because their FLSA claims are time-barred as of the time they filed their consent to sue forms.

PLEASE TAKE FURTHER NOTICE that, pursuant to this Court's Order of February 9, 2023 (ECF No. 233) and Section 2.B of Honorable Judge Gorenstein' Individual Practices, the undersigned emailed Plaintiff's counsel on February 23, 2023, to propose a briefing schedule for this motion. Plaintiffs' counsel did not respond. On February 24, 2023, the undersigned followed

up her former email. On February 28, 2023, Plaintiffs' counsel refused the proposal and requested that the parties follow the Local Rules regarding briefing schedules of motions. Thus, pursuant to Section 2.B of Honorable Judge Gorenstein's Individual Practices, Fed. R. Civ. P. 6, and Local Civil Rule 6.1 and Rule 6.4, answering papers, if any, shall be served on the undersigned no later than fourteen (14) days after service of the moving papers or at such other time as this Court may direct. The moving party shall have seven (7) days after service of the responding papers to file and serve reply papers.


Dated: March 2, 2023
New York, New York

DANNY GRACE PLLC
ATTORNEYS FOR DEFENDANTS
225 BROADWAY, SUITE 1200
NEW YORK, NY 10007
(516)748-9848

_____/s/_____
YUTING LI, ESQ.

This motion does not comply with the Court's Order of February 9, 2023. Permission was given to defendants only to make a motion to decertify the collective action. While not a model of clarity, these motion papers appear to seek relief in addition to decertification. Thus this motion (Docket # 235) is deemed withdrawn without prejudice to defendants' filing by March 10, 2023, a motion that seeks exclusively the remedy of decertification.

So Ordered.



GABRIEL W. GORENSTEIN
United States Magistrate Judge
March 3, 2023